did so after petitioner had indicated that he was a ready buyer. Petitioner also purchased marihuana from Arreola on several occasions, and accompanied him to Mexico to get more. This was sufficient evidence from which the jury could infer that petitioner was a participant in a smuggling conspiracy. Compare *Direct Sales Co.* v. *United States*, 319 U.S. 703; *United States* v. *Warner*, 441 F. 2d 821 (C.A. 5).

b. The contention that the trial judge should have acquitted petitioner on the two substantive offenses of which he was convicted[1] similarly is without merit. Petitioner correctly points out that the government's theory was that he aided and abetted in these offenses, and the jury was properly instructed regarding this (see R. 204-205). His claim is that the evidence showed at most that he was "an accessory after the fact" and was insufficient to support his conviction of aiding and abetting, since his "role as [a] purchaser was essentially passive" (Pet. 28, 30). But, the evidence supports the view that petitioner was not merely "passive," but actively participated in several phases of the operation. On these facts, the jury could properly determine that petitioner had aided and abetted in the offenses charged.

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[1] One count (count 4) charged smuggling of marihuana on June 2, 1970; the other (count 5) charged the receipt, concealment and facilitation of the transportation of marihuana on that same date.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

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